Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by Verizon for Authorization	)	
Under Section 271 of the Communications	)	
Act to Provide In-Region, InterLATA	)	WC Docket No. 02-214
Services in the State of Virginia	)	
	)	

COMMENTS OF WORLDCOM, INC. ON THE APPLICATION BY VERIZON FOR AUTHORIZATION TO PROVIDE IN-REGION, INTERLATA SERVICES IN VIRGINIA

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INTRODUCTION AND EXECUTIVE SUMMARY

With the extensive work that the Commission has done on the Virginia arbitration over the course of the last two years, deciding Verizon's section 271 application for Virginia should have been easy. If Verizon had incorporated the Commission's non-price arbitration rulings into interconnection agreements, shown it could adhere to those rulings in practice, and reduced prices to TELRIC levels, competitors likely would have had little about which to complain. Unfortunately, Verizon chose to apply before taking any of these steps, resulting in a premature application that must be denied. This is not mere quibbling over technicalities, for WorldCom has been trying to reach an interconnection agreement with Verizon for two and a half years, but still does not know the final rules that will be included in that agreement because of seemingly endless roadblocks by Verizon. The uncertainty of WorldCom and other CLECs is increased by Verizon's August 16 filing of a Petition for Clarification and Reconsideration of the Commission's non-price arbitration order, and the possibility of subsequent appeals by Verizon.

Nor do CLECs know whether the required changes to Verizon's interconnection agreement will be adequately carried out in practice. Verizon has not yet made the changes in its systems and procedures that are needed to fulfill the Commission's non-price rulings. As a result, Verizon has not shown that it is presently ready to furnish all of the items on the competitive checklist as section 271 requires. Verizon has not yet shown that it is able to provide customized routing, for example, despite the Commission's determination that customized routing is required by existing Commission rules. Further, while WorldCom is just beginning to ramp up orders in Virginia, it appears that Verizon may well have other OSS problems, including issues with electronic billing that are a concern in other states in its region.

The pricing of UNEs in Virginia also remains greatly in excess of TELRIC, for all the reasons that WorldCom and others explained in detail to the Commission in the arbitration. We are hopeful that the UNE rates will be significantly reduced by the Commission in its upcoming decision. But for now rates are far too high. Verizon should have waited to apply until after it incorporates the new rates that will be ordered by the Commission, unless it chooses now to voluntarily reduce its rates to TELRIC levels. Cost-based rates – not excessive rates and a true up – are a condition of interLATA entry under section 271.

In short, Verizon's Virginia application should be denied until the non-price issues from the Commission's recent decision are incorporated into interconnection agreements and fully implemented, until Verizon's other OSS issues are remedied, and until Verizon's above-cost prices are reduced.

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Verizon inexplicably applies for section 271 authorization in Virginia before implementing this Commission's non-price decision in the Virginia arbitration,[1] and while UNE rates remain far too high. Verizon should have waited to apply until after it implements this Commission's arbitration decision – implementation that it claims is only weeks away – and until after it reduces UNE rates to acceptable levels. But with utter disregard for the Commission's complete-when-filed rule, Verizon applies for section 271 authority based on interconnection agreements it knows to be facially deficient and before making operational changes necessary to implement the Commission's decision. The Commission must draw the line and compel Verizon to go back and re-apply only when it meets the requirements of section 271.

I. VERIZON HAS NOT YET IMPLEMENTED THE COMMISSION'S NON-PRICING ARBITRATION DECISION

Given the posture of Verizon's premature application, it is helpful to take a step back to revisit a few basic principles. The Telecommunications Act of 1996 was designed to ensure that local competition developed before BOCs began providing in-region long distance service.

Congress prohibited BOC entry into the long distance market prior to full implementation of the competitive checklist because the BOCs otherwise would have an "unfair advantage" over long distance competitors in, inter alia, providing "combined packages" of local and long distance services to customers who desire "one-stop shopping." Michigan Order ¶ 187. Thus, the Commission has explained that it "must make certain that the BOCs have taken real, significant, and irreversible steps to open their markets" before authorizing their entry into in-region long distance. Michigan Order ¶ 18. See also South Carolina Order ¶ 9.

In particular, the Act requires that a BOC "provide" each of the 14 checklist items in order to meet Track A or generally offer those items in order to meet Track B. In either case, the Commission has explained, the BOC "must show that it has a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist item in quantities that competitors may reasonably demand and at an acceptable level of quality." Maine Order App. D ¶ 5. If the BOC is not currently furnishing the item, the BOC must provide evidence based on testing that it is ready to furnish the item. South Carolina Order ¶ 81.

Moreover, the BOC must meet these requirements at the time it files its application. Michigan Order ¶ 52-55. The Commission adopted the complete-when-filed rule in order to protect the statutory role of the Department of Justice, allow all parties to comment on the relevant evidence without creation of a moving target, and allow the Commission adequate time to evaluate the evidence. Id. In addition,

a BOC's promises of future performance to address particular concerns raised by

[1] The order of July 17, 2002 was issued by the Wireline Competition Bureau based on delegated authority.

> commenters have no probative value in demonstrating its present compliance with the requirements of section 271. Paper promises do not, and cannot, satisfy a BOC's burden of proof. In order to gain in-region, interLATA entry, a BOC must support its application with actual evidence demonstrating its present compliance with statutory conditions for entry, instead of prospective evidence that is contingent on future behavior. Significantly, the timing of a section 271 filing is one that is solely with the applicant's control. We therefore expect that, when a BOC files its application, it is already in full compliance with the requirements of section 271. . . . Evidence demonstrating that a BOC intends to come into compliance with the requirements of section 271 by day 90 is insufficient. If, after the date of filing, the BOC concludes that additional information is necessary, or additional actions must be taken, in order to demonstrate compliance with the requirements of section 271, then the BOC's application is premature and should be withdrawn.

Id. ¶ 55 (emphasis in original).

BOCs are working to eviscerate this rule, however, and, along with it, the Act's ordained sequence of local competition and then in-region long distance entry. BOCs have learned that they are able to adopt UNE rates, OSS processes, and competitive policies that severely limit competition, leave these policies in place until shortly before – or even after – applying for section 271 authority, and only then alter these policies. This has made it possible for BOCs to enter the long distance market in various states just as conditions necessary for local competition are put in place for the first time.

Verizon here attempts to distort the process even further. It applies for section 271 authorization without having yet entered the interconnection terms this Commission already has determined are necessary to meet the requirements of the Act. As part of the Virginia arbitration, the Commission resolved many issues against Verizon based "on current Commission rules and precedent," rejecting any "proposals that extend beyond existing law."

Virginia Arb. Order ¶ 31.[2] The Commission's conclusion that Verizon's proposed interconnection agreement fails to comply with the Act inherently leads to the conclusion that its existing agreements also fail to do so because they suffer from many of the same deficiencies. Indeed, on August 2, 2002, Verizon filed an ex parte letter (incorrectly dated August 29) in which it attached an August 1 letter to CLECs ("Aug. 1 letter") listing all of the new items that would be made available to them based on the Commission's Order that were not already included in any existing interconnection agreement. These prospective offerings relate to interconnection, unbundled loops, unbundled transport and OSS.

But Verizon has not yet altered its interconnection agreements to include concrete and specific legal obligations to furnish these required items with specific terms and conditions and, even its offer to include these items in its interconnection agreements is "subject to the results of any rehearing or appeal." Aug. 1 Letter. Verizon also has not shown that it is ready to furnish these items in quantities that competitors may reasonably demand and at an acceptable level of quality. Verizon's application therefore fails checklist items (i), (ii), (iv), (v), and (vi), at a minimum.

The fact that Verizon previously obtained section 271 authority in other states without providing all of the items ordered in the Virginia arbitration does not alter this conclusion. The Commission did not conclude in its prior section 271 orders that it was unnecessary to provide these items. It simply did not address them.[3] And even if it had previously decided based on the

[2] This forecloses any argument by Verizon that the rules are new ones that are going into effect after Verizon files its application, Texas Order ¶¶ 22, 27, or obligations not yet firmly established by the Commission, Arkansas-Missouri Order ¶ 105.

[3] Presumably, this is because CLECs did not raise these issues. There are any number of reasons why a CLEC might raise an issue in section 271 proceedings in one state that it did not raise in a prior state – despite its strong incentive to raise all strong issues in opposing a BOC's initial application. The state record in one state may be stronger than

records before it that Verizon did not have to provide these items, those decisions would not foreclose a CLEC from presenting new evidence in Virginia showing the Commission should reach a different conclusion. To rely on the Commission's prior determinations in other states with different records would violate the Act's command that "[t]he Commission shall not approve the authorization requested . . . unless it finds that" Verizon has "fully implemented" the requirements of the checklist, 47 U.S.C. § 271(d)(3), and that "the Commission may not, by rule or otherwise, limit" in any way the requirement that each of the requirements of the checklist has been satisfied. Id. § 271(d)(4).

The Commission has previously stated as much, concluding that "the statute requires the Commission to make a separate determination of checklist compliance for each state and, accordingly, we do not consider any finding from previous section 271 orders to be dispositive of checklist compliance in current proceedings. While the commission's review may be informed by prior findings, the Commission will consider all relevant evidence in the record." Maine Order App. D ¶ 13. Indeed, the bedrock requirement of the APA is that an agency must base findings on the "whole record" before the agency. 5 U.S.C. § 706(2)(E). On this record, there can be no doubt that Verizon has not met the requirements of the Act. Because the Commission has, in effect, now concluded that Verizon's current interconnection agreements do not comply with section 251, it necessarily follows that Verizon has not met the requirements of section 271.

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in another state with respect to what CLECs asked for in their interconnection agreements, making it more likely the FCC would accept these as legitimate section 271 issues. A particular issue may be of more importance in one state than another. A CLEC may simply not have focused on an issue in one state given the severe time constraints of the

A. Verizon's Interconnection Agreements Are Facially Inadequate

Verizon states that it will incorporate the Commission's Order into new interconnection agreements in a matter of weeks. Verizon Comments at 13. If so, Verizon should have waited those weeks before applying. Under the complete-when-filed rule, Verizon must have interconnection agreements that comply with the Act at the time it applies.[4]

Verizon may argue that the complete-when-filed rule has been rendered a dead letter in the Rhode Island Order that allowed Verizon to reduce UNE rates to permissible levels while its section 271 application was pending. But that decision was based in part on the limited nature of Verizon's rate changes. Rhode Island Order ¶ 10. Here, in contrast, Verizon's post-filing changes to its interconnection agreements will extend to a multitude of checklist issues.

Importantly, in Rhode Island, Verizon's reduction in UNE rates produced certainty as to what the new prices would be. Once Verizon agreed to reduce the rates, there was no doubt as to the new rates. Here, in contrast, while there may be a single conforming contract, the process is not yet over and competing interconnection agreements may be filed with the Commission each claiming that they meet the requirements of the Commission's Order. In addition, Verizon already has filed a petition asking for reconsideration of the Commission's Order, and Verizon may still appeal. Thus, for now, and even possibly by the time the Commission decides whether to grant Verizon's application, CLECs will have no certainty as to the content of their interconnection agreements. They cannot yet plan business and marketing strategies secure in

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section 271 process. Or the market may have evolved over time, increasing the importance of a particular issue by the time of an application in a different state.

[4] The Massachusetts Order cited by Verizon is entirely inapposite. Verizon Comments at 13. In that Order, the Commission held that Verizon's adoption of new language regarding line splitting into its interconnection agreement after filing was sufficient. Massachusetts Order ¶ 175. But Verizon was there complying with new Commission

the knowledge as to what Verizon's practices will be on an ongoing basis.

Finally, unlike in Rhode Island, Verizon here is applying for section 271 authorization with an absolute certainty that its current practices do not comply with the competitive checklist. In Rhode Island, Verizon applied while arguing that it was already in compliance. It subsequently changed its UNE rates when New York lowered its rates, thus altering the relevant benchmark, and when commenters demonstrated that the existing rates were too high. Rhode Island Order ¶¶ 9, 12-13. Indeed, it was central to the Commission's decision to waive the complete-when-filed rule in Rhode Island that Verizon needed to reduce UNE rates after filing in part as a result of the new New York decision – the timing of which was not in Verizon's control. Here, in contrast, Verizon was fully aware when it filed of the need to revise its interconnection agreements.

The complete-when-filed rule is meaningless if a BOC can apply before implementing steps that even it recognizes are necessary to comply with the checklist. As the Commission has explained, because the date of application is fully in the BOC's control, an application that does not meet the checklist requirements when filed is "premature and should be withdrawn" even if the BOC shows that it intends to come into compliance within the 90 day period. Michigan Order ¶ 55.

Verizon may argue that CLECs know that they will eventually have agreements found to be checklist compliant by the FCC or by a court and that it is somehow unfair to Verizon to force it to wait until a final compliant agreement is in place before it can apply for section 271 authority. That is nonsense. What would be unfair – and contrary to the requirements of the Act

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rules that were also issued after Verizon had filed. Here, Verizon has not complied with a Commission order issued

– would be to allow Verizon into long distance before the preconditions of local competition have been established with any certitude. Nor should Verizon be able to game the system so that it is able to get a practical advantage by delaying those preconditions until the time of its entry into long distance.

This is especially so because Verizon is primarily responsible for the long delay in reaching an interconnection agreement consistent with the requirements of the Act. WorldCom has been seeking a new interconnection agreement with Verizon for two and a half years, but Verizon has thrown up constant roadblocks to completion of a reasonable agreement. WorldCom initiated negotiations with Verizon on March 3, 2000 because the Initial Term of its existing interconnection agreement was set to expire on July 17, 2000. WorldCom requested that Verizon use the existing interconnection agreement as the basis of a new agreement. The prior year, WorldCom and Verizon (then Bell Atlantic) had used the existing Virginia interconnection agreement as the basis for negotiating an agreement in Maryland with the understanding that it would also be the basis for negotiating a new agreement in Virginia. Yet on March 16, 2000, Verizon informed WorldCom that it would only entertain discussions using an entirely new Bell Atlantic "template agreement" that bore no resemblance to the existing agreement.[5] The positions Verizon took in its new proposal (and subsequently) were extreme. Rather than agreeing to a single point of interconnection per LATA as the Act and Commission regulations require, for example, Verizon insisted on multiple interconnection points or the

before filing that merely interpreted long extant Commission rules.

[5] It is relevant to distinguish Verizon's position prior to September 2000 from after that time. Prior to September 2000, Verizon had insisted that the parties negotiate from the Bell Atlantic template. After September 2000, Verizon's position changed and it insisted, as it still does today, that the parties negotiate from a different "Verizon template" agreement. As of the time WorldCom filed its arbitration petition at the VSCC, Verizon had not provided the Verizon template to WorldCom.

financial equivalent of multiple interconnection points. As the Commission is well aware, Verizon took numerous other positions far afield from the requirements of the Act.[6]

On April 3, 2000, WorldCom sought to end the impasse by petitioning the Virginia State Corporation Commission ("VSCC") for mediation in accordance with section 252 of the Act. Verizon formally opposed the mediation request, claiming it was "premature," and the VSCC took no formal action on that request. Verizon subsequently proposed delaying the beginning of negotiations until December 15, 2000. Given the absence of meaningful negotiations or mediation, WorldCom filed a petition for arbitration with the VSCC on August 10, 2000. On September 13, 2000, the VSCC issued an order stating that it would not review the arbitration petition under federal law. Accordingly, WorldCom filed a petition for preemption with the Commission on October 26, 2000, which Verizon tried to dismiss due to the lack of negotiations. WorldCom's petition was granted by the Commission on January 19, 2001. AT&T and Cox also filed preemption petitions. After extensive proceedings, the Commission issued its non-pricing decision on July 17, 2002.

Now that the Commission has required Verizon to come into compliance with the Act, Verizon states that it will do so – while reserving the right to appeal. But Verizon should not be able to game the system so that its long distance entry coincides with or precedes such compliance. Granting Verizon's application in such circumstances would provide the very incentive for last-minute changes that the Commission has stated it would try to avoid. Rhode Island Order ¶ 17. Verizon must apply again after entering interconnection agreements that

[6] For example, Verizon contended it was entitled to collocate at WorldCom premises. Verizon indicated it would not provide two-way trunking absent mutual agreement. Verizon proposed that WorldCom be required to install its own NID adjacent to Verizon's. And Verizon advocated allowing it to terminate a CLEC's access to OSS if, in Verizon's

comply with the Act and after exhausting (or promising to refrain from) all appeals of those agreements.

B. Verizon Has Not Shown It Is Operationally Ready on Arbitrated Non-Price Issues

Verizon's application must be rejected for operational reasons as well. Revision of its practices to meet the requirements of the checklist requires more than changes to paper interconnection agreements. Unlike the rate changes Verizon implemented in Rhode Island, the changes Verizon must make in Virginia in order to meet the competitive checklist include operational changes. To provide the items the Commission determined are required by the Act, Verizon must do more than simply agree that it will provide these items. It must change its systems and procedures. As a result, merely including these items in its interconnection agreements is insufficient to meet the prerequisites of section 271 authorization. Verizon must also show that it is ready to furnish the items in quantities that competitors may reasonably demand and at an acceptable level of quality – using evidence from testing or commercial experience, as discussed above. This Verizon has not done.

For example, Verizon has not shown that it is capable of providing customized routing. Customized routing enables a requesting CLEC to designate the particular outgoing trunks associated with unbundled switching provided by the incumbent, which will carry certain classes of traffic originating from the CLEC's customers.[7] One use for customized routing is to carry calls from Verizon's switch to the CLEC's Operator Services and Directory Assistance ("OS/DA") platform in order to allow the CLEC to self-provision OS/DA services to its

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view, a CLEC had abused that access. The Commission rightly held against Verizon on these and many other issues.

[7] UNE Remand Order ¶ 441 n.867.

customers. WorldCom wants to self-provision OS/DA services to its customers and has designated its existing Feature Group D trunks as the trunks over which it wants Verizon to route its customers' OS/DA calls.

The Commission properly concluded that Verizon must provide customized routing over Feature Group D trunks. Verizon must provide access to unbundled switching (sections 251(c)(3), 271(c)(2)(B)(ii), (vi)), and customized routing is part of the unbundled switching element.[8] Moreover, in order to provide access to OS/DA, as required by sections 251 and 271(vii), BOCs must either provide OS/DA as a UNE or provide customized routing – as set forth in the UNE Remand Order.[9] As the Commission explained in the Virginia Arbitration Order:

> The Commission's rules implementing section 251(c)(3) require that Verizon must provide nondiscriminatory access to operator services and directory assistance as a UNE except where it provides requesting carriers with customized routing or a compatible signaling protocol for their customers' operator services and directory assistance traffic. Because Verizon proposes to comply with this rule by providing WorldCom with customized routing, we conclude that WorldCom can invoke the section 252 arbitration process to resolve its dispute with Verizon over the terms and conditions of this customized routing arrangement.

Virginia Arb. Order ¶ 535. Thus, the Commission ordered Verizon to include in its interconnection agreement with WorldCom language reflecting its agreement to use AIN architecture to route OS/DA calls over WorldCom's Feature Group D trunks.[10]

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[8] 47 C.F.R. § 51.319(c)(1)(iii)(B) ("all features, functions and capabilities of the switch, which include but are not limited to: (B) All other features that the switch is capable of providing, including but not limited to, customer calling, customer local area signaling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch.")

[9] See UNE Remand Order ¶ 441.

[10] The Commission also recognized the ILECs' obligations to provide customized routing specifically over Feature Group D trunks in its review of a BellSouth Louisiana's section 271 application. Louisiana II Order ¶ 221. Because MCI did not demonstrate that it had actually requested this method of customized routing from BellSouth, the Commission found the record inconclusive. Nonetheless, the Commission concluded that, absent technical

But revision of this language will not mean that Verizon is providing customized routing, as the checklist requires. As the Commission specifically concluded, "Verizon makes no claim that it has tested whether its AIN architecture will successfully route operator services and directory assistance traffic to Feature Group D trunks. In these circumstances, we find that Verizon has not shown that it is presently able to provide customized routing to those trunks using AIN. Moreover, we find that there is a reasonable possibility that AIN routing will fail." Id. ¶ 539 (emphasis added). Because Verizon has not shown that it is able to provide customized routing, Verizon does not currently meet checklist requirements (ii) and (vii) and will not have met them even when it revises its interconnection agreement. Verizon must show that it can successfully route OS/DA traffic to Feature Group D trunks before it gains section 271 authority.

Customized routing is a prime example of something ordered by the Commission that requires more than a paper change to an interconnection agreement, but many others also exist.

- The Commission ordered Verizon to provide access to sub-loops without an intermediary device both at the NID and at the Feeder Distribution Interface. Virginia Arb. Order ¶ 426. No current interconnection agreement in Verizon permits such access. Verizon August 1 letter. In order to provide such access, Verizon will have to establish

infeasibility, an ILEC's failure to provide customized routing using Feature Group D signaling violates the Act. The Commission stated:

> MCI raises a separate challenge to BellSouth's customized routing offering. MCI claims that BellSouth will not "translate" its customers' local operator services and directory assistance calls to Feature Group D signaling. As a result, MCI cannot offer its own operator services and directory assistance services to customers it serves using unbundled local switching. MCI, however, fails to demonstrate that it has requested Feature Group D signaling, and BellSouth claims that it has never received such a request. Thus, the record is inconclusive as to this objection. We believe, however, that MCI may have otherwise raised a legitimate concern. If a competing carrier requests Feature Group D signaling and it is technically feasible for the incumbent LEC to offer it, the incumbent LEC's failure to provide it would constitute a violation of section 251(c)(3) of the Act. Our rules require incumbent LECs, including BOCs, to make network modifications to the extent necessary to accommodate interconnection or access to network elements.

Id. ¶ 226.

new procedures for CLECs to coordinate with Verizon to access the sub-loop. This is so because the Commission concluded that "WorldCom may access the network side of Verizon's NID only when the connection is performed by a Verizon technician." Virginia Arb. Order ¶ 426. And to provide access to the FDI will require "close coordination between Verizon and WorldCom" and "perhaps remote coordinated verification of the results." Id. ¶ 433. Indeed, during the arbitration, Verizon argued that access without an intermediate device was technically infeasible, id. ¶ 431, suggesting that, at a minimum, Verizon will not instantaneously be able to provide such access now that the Commission has ordered it.

- The Commission ordered Verizon to provide stand alone tandem switching and interoffice transport as UNEs. Virginia Arb. Order ¶ 121. Through use of these UNEs, CLECs will be able in effect to interconnect with other CLECs much less expensively than they otherwise would. Yet Verizon has never provided tandem switching as a stand alone UNE anywhere in its region, id., and thus has not yet shown it is able to do so. For example, Verizon must establish ordering and billing procedures for tandem switching in order to provide such switching, but does not indicate such procedures are in place.

- The Commission ordered Verizon to provide two-way trunking even where Verizon does not specifically agree. Virginia Arb. Order ¶ 147. Two-way trunking will substantially reduce the cost of transport for WorldCom. But Verizon has not yet included two-way trunking in any interconnection agreement in Virginia. Verizon August 1 letter. Nor has Verizon even shown that it is able to provide two-way trunking on demand. Indeed, Verizon argued that two-way trunking presents "operational issues for Verizon's network." Id. ¶ 146. Verizon must show that it is able to overcome any such operational issues.

- The Commission ordered Verizon to allow CLECs to interconnect local interconnection trunks having DS-3 interfaces everywhere that is technically feasible to do so, including non-intermediate hub locations. This is so even if multiplexing equipment in non-hub offices cannot currently perform this task and must be modified. Virginia Arb. Order ¶ 237. Verizon has not yet shown that it will effectively perform any necessary modifications when technically feasible DS-3 interconnection is requested.

- The Commission ordered Verizon to make dark fiber available when it is routed through intermediate offices. Virginia Arb. Order ¶ 457. Verizon does not do so in any interconnection agreement today. Verizon August 1 letter. In order to provide dark fiber that is routed through intermediate offices, Verizon will have to alter its ordering and provisioning procedures.

These examples are only some of the operational changes that Verizon will have to make to comply with existing Commission rules, as explained in the Commission's non-pricing order. In short, because Verizon has refused for years to enter into interconnection agreements reflecting existing Commission rules, it is not yet providing the interconnection and UNEs required to meet the section 271 checklist. Simply altering its interconnection agreements to accurately reflect its obligations will not alter this fact. Verizon must provide testing or commercial evidence to show it is ready to furnish all checklist items. It has not done so. Its application must therefore be denied.

II. VERIZON'S OSS IS NOT YET READY

Accurate and auditable wholesale bills are critical to competitors. Pennsylvania Order ¶ 22. Unfortunately, it appears that Verizon is incapable of providing such bills.

WorldCom does not yet have experience with Verizon's wholesale bills in Virginia because it has only just begun submitting orders through its own OSS. Until August 1, WorldCom submitted its Virginia orders through Z-Tel's OSS based on a partnership with Z-Tel, and Z-Tel received the wholesale bills. It is WorldCom's understanding that Z-Tel is experiencing substantial problems with those bills. Lichtenberg Decl. ¶¶ 2-3.

In Pennsylvania, WorldCom continues to experience similar problems to those Z-Tel is experiencing in Virginia. Because the billing format is similar in the two states, WorldCom believes its Pennsylvania problems are indicative of those it will have in Virginia. Id. ¶ 3. The Commission is well aware of the extensive billing problems that once existed in Pennsylvania. Pennsylvania Order ¶ 36. Some of these problems have continued despite evidence presented in the Pennsylvania section 271 proceeding that Verizon's billing problems had been addressed. In particular, Verizon is not providing information needed to ascertain what the credits on the bills are for, making it impossible to match those credits against particular billing disputes. Id. ¶¶ 8-12. Verizon also is not providing the ANIs needed to fully audit bills. Id. ¶¶ 5-7. Finally, Verizon's regional process for submitting billing disputes is burdensome, making it much more costly to get such disputes resolved. Id. ¶¶ 13-15. Thus, WorldCom is not able to fully audit its Pennsylvania bills and faces significant difficulty in submitting and resolving disputes.

In addition to its billing problems, Verizon also has recently deviated from its change management process. Verizon recently implemented a significant change – designed to allow Verizon to reject orders of CLECs that were not paying bills – without providing any notification to CLECs. Verizon has admitted that it did not follow its change management process in doing so. Id. ¶¶ 17-19. Verizon must establish a new track record of compliance with its change management process – and fix its billing systems – before obtaining section 271 authorization.

III. VERIZON'S UNE RATES ARE TOO HIGH

Verizon's section 271 application must also be denied because its current UNE rates are far above cost. During the recent Virginia arbitration, WorldCom and AT&T submitted evidence showing that the TELRIC rate for UNE loops in Virginia is $6.48 and the TELRIC rate for switching is $2.94. Yet Verizon's current rates are far higher, at $13.76 for loops and $8.66 for switching elements.[11]

Unlike other checklist items, with pricing Verizon cannot claim that it will incorporate Commission ordered rates into new interconnection agreements in a matter of weeks. This Commission has not yet issued its decision regarding UNE pricing in Virginia. Thus, there are not yet new rates for Verizon to implement.

While Verizon may assert that it is not responsible for the delay, this is at most only partly true. Verizon's general intransigence during negotiations delayed the entire process of obtaining an interconnection agreement. And even during the arbitration, Verizon's submission of a new switching model after the hearing already had begun delayed completion of the hearing. In any event, whatever Verizon's responsibility for the delay, CLECs certainly are not responsible, and Verizon does not have cost-based UNEs in place.[12] There is simply no basis to

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[11] The switching element costs reported here for Verizon are based on WorldCom's estimate of dial equipment minutes per line for Verizon Virginia from 2001, while the WorldCom switching element costs reflect our flat-rate proposal.

[12] Of course, Verizon's appeals to the Supreme Court have also had a substantial impact on the timing of final pricing.

allow Verizon to enter long distance with rates far above TELRIC. This is particularly so because Verizon could, if it chose, voluntarily reduce its UNE rates to TELRIC levels at any time.

Verizon argues that the pendency of a new UNE rate decision does not foreclose section 271 authorization based on existing rates. Verizon Comments at 14. That may be so as a general matter, but it would be entirely inconsistent with the Act's requirement of cost-based rates to allow a BOC to obtain section 271 authorization where CLECs have convincingly shown that current rates are far above cost. Here, CLECs demonstrated to this Commission using both their own pricing model and a restatement of Verizon's model that proper rates are less than half of Verizon's current rates. Even if the current rates were reasonable at the time they were set by the Virginia Commission based on the record before it at that time, they are clearly not within a reasonable range of TELRIC rates today.

Verizon itself acknowledges that its non-loop rates exceed those that would be allowed by a comparison with the non-loop rates recently adopted in New York.[13] While Verizon provides a benchmark comparison of its loop rates in Virginia to the rates in New York, it fails to include a similar comparison for its non-loop rates. Indeed, Verizon does not even submit a benchmark comparison of loop and non-loop rates combined, as it has in previous section 271 applications.[14] Verizon states that a benchmark comparison with New York rates is misleading because part of the difference in the rates is due to the inclusion of all features in the Virginia

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[13] See Verizon Brief at page 52.

[14] See, e.g., Martin/Garzillo/Sanford Delaware Declaration at page 31. Delaware's non-loop rates failed the benchmark test on their own, so Verizon combined them with the loop rates to permit it to report a pass of the benchmark test. WorldCom explained why combining loop and non-loop rates for the benchmark test was inappropriate and inconsistent with Commission precedent. See Frentrup Declaration ¶ 5 in WC Docket No. 02-157. For Virginia, Verizon has not even attempted this too-generous test, because the Virginia rates would fail even this test.

rates, whereas New York rates have separate per-port charges for these features.[15] However, Verizon does not claim that this explains the entire difference, nor does it provide a benchmark analysis that includes these rates.

By promising a true-up of current rates once new rates are established, Verizon implicitly acknowledges that its current non-loop rates are not TELRIC. WorldCom has therefore not expended additional resources in attempting to detail here all the reasons that the current Virginia non-loop rates are excessive. One illustrative example of a TELRIC error, however, is the manner in which the mix of new and growth switches was determined.

The switch rates are set based on an assumption of 54 percent new and 46 percent growth switch purchases. This mix was determined by assuming that new switches would be purchased to be able to meet the demand for the next five years, and any additions to the switches needed to meet demand growth after that point would come from growth purchases. Even assuming that some use of growth purchases were appropriate in a TELRIC model, Verizon's methodology could not be considered cost based, because it does not consider that it may be more cost effective to set the initial size of the switch to meet some demand level other than that expected over the next five years. Depending on the relative size of the new and growth discounts, it might be more cost-effective initially to build a larger (or smaller) switch. But Verizon's methodology for sizing the switch is not based on any cost considerations at all, and thus does not reflect TELRIC.

Verizon also attempts to justify approval of its application based on its promise of a true up, back to August 1, 2002, based on whatever rates the Commission ultimately approves. That promise is insufficient. CLECs are entitled to cost-based rates now, not above-cost rates with a

[15] See Woltz/Garzillo/Prosini Declaration ¶ 64.

subsequent refund. WorldCom must determine whether to expand its service in Virginia and whether to devote more of its limited resources to the Virginia market. WorldCom should not be forced to make such plans based only on the promise of a refund. This is especially so because WorldCom does not know the size of any refund, as it does not know what the rates will ultimately be. And even if it did know, WorldCom should not have to pay above-cost rates today, increasing its outlay of cash, with an expectation of a future refund. The Act entitles WorldCom to cost-based rates today. See DOJ Oklahoma Evaluation at 61-62 ("the provision for a true-up is hardly sufficient assurance that competitors will in fact be charged cost-based prices now or later.")[16]

As with its switching rates, Verizon's loop rates are outside any reasonable TELRIC range. Verizon does attempt to justify its loop rates in Virginia as benchmarked against the new New York rates. But because the presumption established by a benchmark is rebuttable – at least according to the Commission's briefs in the Massachusetts 271 appeal – the evidence that WorldCom and AT&T have submitted in the Virginia arbitration, which WorldCom incorporates here by reference (for all elements), should clearly suffice to rebut that presumption. WorldCom and AT&T have shown that with a proper TELRIC model, the loop rates in Virginia should be less than half the current rates, which are thus outside any reasonable TELRIC range.

Verizon may presume that the Commission will order new rates into effect sometime within the 90 day application period. WorldCom hopes this is the case. But even if the Commission does so, that would not render this application equivalent to those in which Verizon

[16] The Commission has previously indicated that the existence of interim rates will not preclude section 271 approval where the interim solution is reasonable, the state is committed to FCC pricing rules, and provision is made for true-ups. Texas Order ¶ 88, Pennsylvania Order, App. C, ¶ 23. This conclusion is inapplicable here. The rates at issue are not interim rates but rather permanent rates, and – more importantly – the rates are not reasonable. Thus, while

agreed to a voluntary rate reduction after the filing of an application. In those cases, there was no possibility of an appeal. Here, Verizon may still appeal any Commission decision establishing new rates. Unless Verizon promises not to appeal, CLECs will not have certain rates any time during the 90-day review period.

promise of a true-up may help to justify approval of an application with reasonable interim rates, such a promise cannot justify approval of an application with unreasonable permanent rates.

CONCLUSION

Verizon's application for Virginia should be denied.

Respectfully submitted,

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Certificate of Service

I, Lonzena Rogers, do hereby certify, that on this twenty-first day of August, 2002, I have electronically served a true and correct copy of WorldCom, Inc.'s Comments in WC Docket No. 02-214 on the following:

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